

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

Vol. 16

OCTOBER 27, 1982

No. 43

This issue contains
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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

(T.D. 82-187)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: October 6, 1982.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Acme Truck Line, Inc., P.O. Box 183, Harvey, LA; motor carrier; The Continental Ins. Co.	Dec. 19, 1981	Aug. 19, 1982	New Orleans, LA \$50,000
Mr. John L. Alvarez, dba: Alvarez Truck Brokers, P.O. Box 747, Pharr, TX; motor carrier; Lawyers Surety Corp. (PB 3/26/80) D 8/30/82	Mar. 26, 1982	Aug. 30, 1982	Laredo, TX \$25,000
Blue Arrow, Inc., 525 Burton S.W., Grand Rapids, MI; motor carrier; The American Ins. Co. (PB 2/23/75) D 8/25/82	Aug. 2, 1982	Aug. 25, 1982	Detroit, MI \$50,000
Brook Warehousing System, P.O. Box 506, Manville, NJ; motor carrier; Washington International Ins. Co. D 8/27/82	Mar. 12, 1981	Apr. 8, 1981	Newark, NJ \$50,000
Bur-Cold Express, Inc., P.O. Box 3192, Brownsville, TX; motor carrier; Hartford Casualty Ins. Co. (PB 9/26/80) D 9/3/82	Aug. 26, 1982	Sept. 3, 1982	Laredo, TX \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Camel Trucking, Inc., 130 Eastern Ave., Chelsea, MA; motor carrier; The Continental Ins. Co. (PB 8/15/78) D 8/25/82	Aug. 15, 1982	Aug. 25, 1982	Boston, MA \$25,000
Compass Transportation Co., 3585 Corporate Ct., P.O. Box 81225, San Diego, CA; motor carrier; Fireman's Fund Ins. Co. (PB 4/18/80) D 9/7/82	Apr. 1, 1982	Sept. 7, 1982	San Diego, CA \$50,000
Craig Transportation Co., 26699 Eckel Rd., Perryburg, OH; motor carrier; Ohio Farmers Ins. Co. D 8/20/82	Sept. 21, 1981	Oct. 21, 1981	Cleveland, OH \$50,000
M. A. Davis Transport, Inc., P.O. Box 16160, Houston, TX; motor carrier; Western Surety Co.	Aug. 19, 1982	Aug. 24, 1982	Houston, TX \$35,000
East Penn Trucking Co., Inc., Slatington, PA; motor carrier; Washington International Ins. Co. D 8/29/82	Aug. 29, 1978	Aug. 29, 1978	Philadelphia, PA \$25,000
Fox & Ginn, Inc., Bangor, ME; motor carrier; Liberty Mutual Ins. Co. D 8/31/82	Jan. 22, 1968	Jan. 29, 1968	Portland, ME \$25,000
Henry L. Bridgefarmer, Henry Gillard, Cecil L. Belt, dba: H & H Trucking, Box 371, Princeton, TX; motor carrier; Aetna Ins. Co. (PB 8/25/81) D 8/25/82	Aug. 25, 1982	Aug. 25, 1982	Laredo, TX \$25,000
Hirson Trucking, Inc., 4901 Coliseum Way, Oakland, CA; motor carrier; Mid-Century Ins. Co.	May 14, 1982	Aug. 10, 1982	San Francisco, CA \$25,000
J & M Transportation Co., Inc., P.O. Box 488, Milledgeville, GA; motor carrier; Safeco Inc. Co. 8/23/82	July 12, 1973	Aug. 21, 1973	New Orleans, LA \$25,000
Kroblin Refrigerated Xpress, Inc., 2125 Commercial St., Waterloo, IA; motor carrier; Aetna Casualty & Surety Co. D 8/25/82	June 8, 1978	Oct. 5, 1978	Chicago, IL \$25,000
Howard Martin, Inc., 4315 Meyer Rd., P.O. Box 522, Fort Wayne, IN; motor carrier; The Aetna Casualty & Surety Co.	Aug. 16, 1982	Aug. 23, 1982	Cleveland, OH \$50,000
C. W. Mitchell, Inc., 4401 No. Westshore Blvd., Tampa, FL; motor carrier; Northwestern Nat. Ins. Co. of Milwaukee, WI	Aug. 11, 1982	Aug. 17, 1982	Tampa, FL \$25,000
Mitchell Brothers Truck Lines, 3841 N. Columbia Blvd., Portland, OR; motor carrier; Ins. Co. of North America D 8/24/82	Oct. 19, 1979	Oct. 1, 1979	Portland, OR \$50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Ohio Barge Line, Inc., 600 Grant St., Pittsburgh, PA; water carrier; Federal Ins. Co. D 8/24/82	May 1, 1974	May 23, 1974	New Orleans, LA \$200,000
Eluterio Rodriguez, Jr., P.O. Box 142, Edinburg, TX; motor carrier; Fidelity & Deposit Co. of MD (PB 11/9/79) D 8/27/82	Nov. 1, 1981	Aug. 27, 1982	Laredo, TX \$25,000
Service Transfer, Inc., 4557 Princess Anne Rd., Virginia Beach, VA; motor carrier; Aetna Ins. Co.	July 10, 1982	Aug. 23, 1982	Norfolk, VA \$25,000
Sherman Bros., Inc., 29534 Airport Rd., Eugene, OR; motor carrier; Aetna Casualty & Surety Co.	June 30, 1982	Aug. 20, 1982	Portland, OR \$25,000
T & R Delivery Service, 3000 West Commerce, Dallas, TX; motor carrier; Mid-Century Ins. Co.	Aug. 17, 1982	Aug. 26, 1982	Dallas/Fort Worth, TX \$25,000
The Texas Mexican Railway Co., P.O. Box 419, Laredo, TX; rail carrier; St. Paul Fire & Marine Ins. Co. (PB 10/12/77) D 8/31/82	Aug. 26, 1982	Aug. 31, 1982	Laredo, TX \$100,000
Joe H. Tidwell, P.O. Box 826, Pharr, TX; motor carrier; Fidelity & Deposit Co. of MD (PB 5/1/80) D 8/30/82 ³	June 4, 1982	Aug. 30, 1982	Laredo, TX \$25,000
Valley Trucking Co., Inc., P.O. Box 2298, Brownsville, TX; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 12/22/72) D 8/27/82 ⁴	Aug. 3, 1982	Aug. 27, 1982	Laredo, TX \$25,000
Victory Transfer Co., Inc., 1808 Markley Rd., Laredo, TX; motor carrier; Washington International Ins. Co. (PB 5/23/80) D 8/31/82 ⁵	Aug. 30, 1982	Aug. 31, 1982	Laredo, TX \$25,000
Whitfield Tank Lines, Inc., P.O. Box 7676, Phoenix, AZ; motor carrier; Peerless Ins. Co. D 8/28/82	Jan. 15, 1981	Feb. 2, 1981	Nogales, AZ \$25,000

¹ Principal is Blue-Arrow Douglas, Inc.

² Surety is Boston Old Colony Ins. Co.

³ Surety is Fidelity & Deposit Co.

⁴ Principal is Valley Trucking Co.

⁵ Surety is St. Paul Fire & Marine Ins. Co.

BON-3-03

GEORGE C. STEUART,
(for Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 82-188)

Customs Approved Public Gauger

Approval of public gauger performing gauging under standards and procedures required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of U.S. Seaboard Marine Consultants, Inc., 7235 Lindbergh Boulevard, Philadelphia, Pennsylvania 19153, to gauge imported petroleum and petroleum products in all Customs districts in accordance with the provisions of section 151.43, Subpart C, of the Customs Regulations is approved.

Dated: October 7, 1982.

A. PIAZZA,
(For Director, Entry Procedures
and Penalties Division).

Published in the Federal Register, October 14, 1982 (47 FR 46051)

(T.D. 82-189)

Foreign Currencies—Quarterly List of Rates of Exchange

List of buying rates in U.S. dollars based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c) Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C):

Quarterly beginning: October 1, 1982 through December 31, 1982.

Country	Name of currency	U.S. dollars
Australia	Dollar .....	.94860
Austria	Schilling .....	.056370
Belgium	Franc .....	.020392
Brazil	Cruziero .....	.004826
Canada	Dollar .....	.809520
China, P.R.	Renminbi yuan .....	.506765
Denmark	Krone .....	.113058
Finland	Markka .....	.206633
France	Franc .....	.140105
Germany	Deutsche mark .....	.395961
Hong Kong	Dollar .....	.157480

Country	Name of currency	U.S. dollars
India.....	Rupee.....	.102881
Iran	Rial.....	N/A
Ireland	Pound.....	1.3500
Italy.....	Lira.....	.000704
Japan	Yen .....	.003719
Malaysia.....	Dollar .....	.420875
Mexico	Peso .....	.009091
Netherlands.....	Guilder.....	.362056
New Zealand	Dollar .....	.71900
Norway	Krone .....	.143524
Philippines.....	Peso .....	.114260
Portugal.....	Escudo.....	.011299
Republic of So. Africa.....	Rand.....	.86550
Singapore	Dollar .....	.457247
Spain	Peseta .....	.008764
Sri-Lanka	Rupee .....	.047710
Sweden.....	Krona.....	.159299
Switzerland.....	Franc.....	.459982
Thailand	Baht (Tical).....	.043478
United Kingdom	Pound.....	1.6980
Venezuela.....	Bolivar .....	.232558

(LIQ-03-01 O:C:E)

Dated: October 1, 1982.

ANGELA DEGAETANO,

Chief,

Customs Information Exchange.

(T.D. 82-190)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:

September 1-3, 1982..... \$0.000043

Chile peso:		
September 1-2, 1982.....	\$0.018182	
September 3, 1982.....	0.017544	
Colombia peso:		
September 1-2, 1982.....	\$0.015232	
September 3, 1982.....	0.015221	
Greece drachma:		
September 1, 1982.....	\$0.014156	
September 2, 1982.....	0.014304	
September 3, 1982.....	0.014308	
Indonesia rupiah:		
September 1-3, 1982.....	\$0.001509	
Israel shekel:		
September 1, 1982.....	\$0.035971	
September 2, 1982.....	0.035894	
September 3, 1982.....	0.035348	
Peru sol:		
September 1-2, 1982.....	\$0.001331	
September 3, 1982.....	0.001320	
South Korea won:		
September 1-3, 1982.....	\$0.001342	

(LIQ-03-01 O:C:E)

Dated: September 3, 1982.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 82-191)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

(9/6/82, Holiday, Countries Take 9/3/82 Rate)

Argentina peso:		
September 7-9, 1982.....	\$0.000041	
September 10, 1982.....	0.000042	

Chile peso:		
September 7-9, 1982	\$0.017544	
September 10, 1982	0.016667	
Colombia peso:		
September 7-10, 1982	\$0.015221	
Greece drachma:		
September 7, 1982	\$0.014286	
September 8, 1982	0.014184	
September 9, 1982	0.014172	
September 10, 1982	0.014077	
Indonesia rupiah:		
September 7-10, 1982	\$0.001509	
Israel shekel:		
September 7, 1982	\$0.034590	
September 8, 1982	0.034614	
September 9, 1982	0.034447	
September 10, 1982	0.034530	
Peru sol:		
September 7-9, 1982	\$0.001320	
September 10, 1982	0.001300	
South Korea won:		
September 7-10, 1982	\$0.001342	

(LIQ-08-01 O:C:E)

Dated: September 10, 1982.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 82-192)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:		
September 13-17, 1982	\$0.000037	
Chile peso:		
September 13-16, 1982	\$0.016667	
September 17, 1982	0.014706	

Colombia peso:		
September 13-16, 1982 .....	.....	\$0.015221
September 17, 1982.....	.....	0.015129
Greece drachma:		
September 13, 1982.....	.....	\$0.013990
September 14, 1982.....	.....	0.014049
September 15, 1982.....	.....	0.014108
September 16, 1982.....	.....	0.014010
September 17, 1982.....	.....	0.014267
Indonesia rupiah:		
September 13-17, 1982 .....	.....	\$0.001509
Israel shekel:		
September 13, 1982.....	.....	\$0.034471
September 14-15, 1982 .....	.....	0.034542
September 16, 1982.....	.....	0.034602
September 17, 1982.....	.....	0.034400
Peru sol:		
September 13-16, 1982 .....	.....	\$0.001300
September 17, 1982.....	.....	0.001283
South Korea won:		
September 13, 1982.....	.....	\$0.001342
September 14-17, 1982 .....	.....	0.001346

(LIQ-03-01 O:C:E)

Dated: September 17, 1982.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 82-193)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:		
September 20-24, 1982 .....	.....	\$0.000037
Chile peso:		
September 20-23, 1982 .....	.....	\$0.014706
September 24, 1982 .....	.....	0.014815

Colombia peso:		
September 20-23, 1982	\$0.015129	
September 24, 1982	0.015094	
Greece drachma:		
September 20, 1982	\$0.014134	
September 21, 1982	0.014073	
September 22, 1982	0.014120	
September 23, 1982	0.014085	
September 24, 1982	0.014000	
Indonesia rupiah:		
September 20-24, 1982	\$0.001509	
Israel shekel:		
September 20, 1982	\$0.034258	
September 21, 1982	0.034223	
September 22, 1982	0.034317	
September 23, 1982	0.034317	
September 24, 1982	0.034270	
Peru sol:		
September 20-23, 1982	\$0.001283	
September 24, 1982	0.001269	
South Korea:		
September 20-24, 1982	\$0.001346	

(LIQ-03-01 O:C:E)

Dated: September 24, 1982.

ANGELA DEGAETANO,

Chief,

Customs Information Exchange.

(T.D. 82-194)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:

September 27-30, 1982

\$0.000037

Chile peso:

September 27-30, 1982

\$0.014815

Colombia peso:		
September 27-30, 1982		\$0.015094
Greece drachma:		
September 27, 1982		\$0.013928
September 28, 1982		0.013889
September 29, 1982		0.013957
September 30, 1982		0.013928
Indonesia rupiah:		
September 27-30, 1982		\$0.001509
Israel shekel:		
September 27, 1982		\$0.034270
September 28-29, 1982		0.034188
September 30, 1982		0.034247
Peru sol:		
September 27-30, 1982		\$0.001269
South Korea won:		
September 27-30, 1982		\$0.001346

(LIQ-03-01 O:C:E)

Dated: September 30, 1982.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 82-195)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 82-163 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:		
September 1-2, 1982		\$0.005266
September 3, 1982		0.005047
Mexico peso:		
September 1, 1982		\$0.008130
September 2, 1982		0.006897
September 3, 1982		0.007692

Norway krone:

September 1, 1982.....	\$0.149309
September 2, 1982.....	0.149757

(LIQ-03-01 O:C:E)

Dated: September 3, 1982.

ANGELA DEGAETANO,

*Chief,**Customs Information Exchange.*

(T.D. 82-196)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 82-163 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

(9/6/82, Holiday, Countries Take 9/3/82 rate)

Australia dollar:

September 7, 1982.....	\$0.096730
September 8, 1982.....	0.096400
September 9, 1982.....	0.096520
September 10, 1982.....	0.096080

Brazil cruzeiro:

September 7-9, 1982.....	\$0.005047
September 10, 1982.....	0.004943

Mexico peso:

September 7, 1982.....	\$0.011364
September 8, 1982.....	0.008547
September 9, 1982.....	0.007854
September 10, 1982.....	0.009091

Norway krone:

September 7, 1982.....	\$0.145878
September 8, 1982.....	0.145476
September 9, 1982.....	0.145455
September 10, 1982.....	0.144144

(LIQ-3-01 O:C:E)

Dated: September 10, 1982.

ANGELA DEGAETANO,
Chief
Customs Information Exchange.

(T.D. 82-197)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 82-163 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:

September 13, 1982.....	\$0.95550
September 14-15, 1982.....	0.95680
September 16, 1982.....	0.95530
September 17, 1982.....	0.95810

Brazil cruzeiro:

September 13-17, 1982	\$0.004943
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Mexico peso:

September 13, 1982.....	\$0.009524
September 14, 1982.....	0.010526
September 15, 1982.....	0.011765
September 16-17, 1982	0.011111

Norway krone:

September 13, 1982.....	\$0.143575
September 14, 1982.....	0.144040
September 15, 1982.....	0.143781
September 16, 1982.....	0.143472
September 17, 1982.....	0.143926

Portugal peso:

September 13, 1982.....	\$0.011287
September 14, 1982.....	0.011274

(LIQ-3-01 O:C:E)

Dated: September 17, 1982.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 82-198)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 82-163 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:

September 20, 1982.....	\$0.95660
September 21, 1982.....	0.95540
September 22, 1982.....	0.95680
September 23, 1982.....	0.95630
September 24, 1982.....	0.95400

Brazil cruziero:

September 20-22, 1982.....	\$0.004943
September 23-24, 1982.....	0.004826

Mexico peso:

September 20, 1982.....	\$0.011111
September 21, 1982.....	0.011364
September 22, 1982.....	0.011111
September 23, 1982.....	0.010309
September 24, 1982.....	0.010000

Norway krone:

September 20, 1982.....	\$0.144248
September 21, 1982.....	0.144175
September 22, 1982.....	0.144509
September 23, 1982.....	0.143988
September 24, 1982.....	0.144144

(LIQ-3-01 O:CE)

Dated: September 24, 1982.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 82-199)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 82-163 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:

September 27, 1982	\$0.95100
September 28, 1982	0.94920
September 29, 1982	0.94950
September 30, 1982	0.94950

Brazil cruzeiro:

September 27-30, 1982	\$0.004826
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Hong Kong dollar:

September 30, 1982	\$0.159109
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Japan yen:

September 27, 1982	\$0.003706
September 28, 1982	0.003704

Mexico peso:

September 27, 1982	\$0.010870
September 28, 1982	0.011494
September 29, 1982	0.011111
September 30, 1982	0.010000

Norway krone:

September 27, 1982	\$0.143266
September 28, 1982	0.143215
September 29, 1982	0.144300

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September 30, 1982.....	0.143472
Portugal escudo	
September 29, 1982.....	\$0.011280
September 30, 1982.....	0.011287

(LIQ-8-01 O:C:E)

Dated: September 30, 1982.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

ERRATUM

Appeal No. 82-9, U.S. v. UNIROYAL, INC., BALDWIN, J. Decided September 2, 1982.

Please make the following correction: Page 10, line 10—19 USC 1581 (h)—should be 28 USC 1581 (h).

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson

Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 82-81)

BAR BEA TRUCK LEASING CO., INC., PLAINTIFF *v.* UNITED STATES
OF AMERICA, ET AL., DEFENDANTS

Court No. 82-4-00582-S

BERNARD NEWMAN, *Judge.*

On Defendants' Motion To Dismiss

[Defendants' motion to dismiss denied.]

(Dated September 28, 1982)

Fredric J. Gross, Esq., for the plaintiff.

J. Paul McGrath, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*John J. Mahon*, Assistant Branch Director and *Saul Davis, Esq.*), for the defendants.

BERNARD NEWMAN, Judge: This action contests Customs' denial of plaintiff's application for a cartage license. Defendants have renewed their motion to dismiss for lack of subject matter jurisdiction¹, and further, have moved for dismissal on the ground that plaintiff has failed to state a cause of action upon which relief can be granted.

Defendants previously raised the jurisdictional issue in connection with a motion for a protective order filed by defendants, which jurisdictional issue was determined by this Court adversely to defendants in a recent order. *Bar Bea Truck Leasing Co., Inc. v. United States*, 4 CIT —, Slip Op. 82-72 (September 8, 1972). That previous ruling in Slip Op. 82-72—that the Court of International Trade has jurisdiction of this action under 28 U.S.C. § 1581(i)—is of course, the law of the case. However, two new contentions of defendants do merit discussion: (1) Judicial review is precluded in this case by section 10 of the Administrative Procedure Act, 5 U.S.C. § 701(a)(2); and (2) Plaintiff has failed to state a cause of action upon which relief can be granted.

I

For the first time in these proceedings, defendants contend that the denial of plaintiff's application for a cartage license by the Area Director at Newark is "agency action * * * committed to agency discretion by law" within the purview of 5 U.S.C. § 701(a)(2). Under that provision, agency action "committed to agency discretion by law" is exempt from judicial review. After careful consideration of the pertinent statutory and regulatory provisions concerning cartmen, and the authorities cited by defendants, I am not persuaded that the authority granted to Customs to appoint and license cartmen is "discretion by law" for purposes of section 701(a)(2).

The agency discretion exception in 5 U.S.C. § 701(a)(2) to the general rule that agency action is reviewable is a narrow one, and is only "applicable in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply' [citation omitted]." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971). See also *Montgomery Ward & Co., Inc., et al. v. Zenith Radio Corporation*, 69 CCPA —, — F. 2d — (1982) and *Sierra Club v. Bergland*, 451 F. Supp. 120, 123 (N.D. Mass. 1978). Simply stated, defendants' position is that Customs has complete

¹In *Bar Bea Truck Leasing Co., Inc., et al. v. United States, et al.*, 4 CIT —, Slip Op. 82-64 (August 11, 1982), defendants' previous motion to dismiss was denied without prejudice to renewal in view of the severance of the action by this Court.

and unfettered discretion to issue or deny cartage licenses because "there is no law to apply". I find this contention to be without merit.

As pointed out in *Di Jub Leasing Corp. et al. v. United States, et al.*, 1 CIT 42, 505 F. Supp. 1113 (1980), "[t]he Customs regulations providing for the licensing of customhouse cartmen are set forth in 19 CFR §§ 112, *et seq.*, and these regulations are authorized by 19 U.S.C. §§ 66, 1551a, 1565 and 1624." Pertinent to the issue of agency discretion raised by defendant are 19 U.S.C. § 1565 and the regulation of the United States Customs Service governing the issuance of a cartage license, 19 CFR § 112.24.

19 U.S.C. § 1565 provides in pertinent part:

The cartage of merchandise entered for warehouse *shall* be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond, in a penal sum to be fixed by such customs officer, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted. [Emphasis added.]

19 CFR § 112.24 reads:

The district director *shall* issue a customhouse cartage and lighterage license on Customs Form 3857 *provided he is satisfied that:*

- (a) The character, qualifications, and experience of the applicant and fitness of his equipment are satisfactory.
- (b) The applicant has complied with all the requirements of § 112.22. [Emphasis added.]

Plainly, the language of the regulation, "shall issue", is not merely permissive, but is mandatory,² and the District Director's discretion is limited to ascertaining whether an applicant for a cartage license meets the criteria set forth in paragraph (a) of the regulation. Since the District Director must be "satisfied" that an applicant meets the criteria specified in paragraph (a), obviously, the regulation involves the exercise of judgment and discretion concerning the background of an applicant, but clearly does not give the District Director unfettered discretion or the right to arbitrarily reject applications for cartage licenses.

Fundamentally, administrative action is not immunized from judicial review merely because the agency is called upon to exercise discretion in passing upon applications and making decisions thereon. *Cf. Adams v. Witmer*, 271 F. 2d 29, 33 (9th Cir. 1959). See also *Local 2855 AFGE (AFL-CIO) v. United States*, 602 F.2d 574 (3rd Cir. 1979); *Homovich v. Chapman*, 191 F.2d 761, 764 (D.C. Cir. 1951); *Montgomery Ward & Co., Inc., et al.*, *supra* ("If an action is discre-

²By contrast see: *Hamel v. Nelson*, 226 F. Supp. 96 (N.D. Calif. 1963) (statutory language was "may, in his [Secretary of Interior's] discretion * * * issue a patent"); *Panama Canal Co. v. Grace Line, Inc.*, 356 U.S. 309 (1958) (Panama Canal Co. was "authorized" to prescribe tolls and change them). See also *Sierra Club v. Hardin*, 325 F. Supp. 99 (D. Alaska 1971) ("Mandatory" and "permissive" statutes distinguished for purposes of reviewability). Significantly, neither the controlling statute nor regulation in the instant case provides that cartage licenses may be issued by the District Director in his discretion.

tionary but there is law from which a court may determine that the exercise of discretion is arbitrary, capricious, or not in accordance with law, the decision itself may be reviewed on that limited basis."); and *Santor v. Morton*, 383 F. Supp. 1265, 1266 (D. Wyo. 1974) ("If the controversy merely 'involves' agency discretion, as opposed to being 'committed' to agency discretion, the matter is reviewable"). Furthermore, the action of a government agency "is subject to judicial review for arbitrariness and abuse of discretion, even though the discretion may be broad". *People v. United States* Dept. of Agriculture, 427 F. 2d 561, 567 (D.C. Cir. 1970).

In summary, where there is "law" to apply, the exception to the general rule of reviewability set forth in 5 U.S.C. § 701(a)(2) does not apply. Here, "[p]lainly, there is 'law to apply' and thus the exemption for action 'committed to agency discretion' is inapplicable". *Citizens to Preserve Overton Park v. Volpe, supra*.

II

Defendants further contend that the action should be dismissed on the ground that the complaint fails to state a claim upon which relief can be granted. In considering a motion to dismiss on that ground, the allegations of the complaint must be taken as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972); and the complaint must be construed favorably to plaintiffs. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Ibid.* (Quoting from *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).) In applying the foregoing well-established principles to the instant case, defendants' motion to dismiss must be denied. In essence, plaintiff's complaint challenges the factual underpinnings for Customs' denial of the application, and claims that the administrative action was arbitrary and capricious. If accepted as true, plaintiff's complaint clearly states a cause of action upon which relief may be granted under 5 U.S.C. § 706.

Accordingly, defendants' motion to dismiss is denied. A separate order will be entered herewith requiring the government to file the administrative record and certified documents relating to the denial of plaintiff's application for a cartage license within ten (10) days after entry of this order, as proposed by defendants.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, OCTOBER 13, 1982

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

Investigations Nos. 731-TA-113 and 114 (Preliminary)

CARBON STEEL WIRE ROD FROM BRAZIL AND TRINIDAD AND
TOBAGO

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigations Nos. 731-TA-113 and 114 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil and Trinidad and Tobago of carbon steel wire rod, which are alleged to be sold in the United States at less than fair value. For the purposes of these investigations, carbon steel wire rod is defined as a coiled, semifinished, hot-rolled, carbon steel product of approximately round, solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured, and valued over 4 cents per pound. As defined, carbon steel wire rod is provided for in item 607.17 of the Tariff Schedules of the United States.

EFFECTIVE DATE: September 30, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen P. Miller, Office of Investigations, U.S. International Trade Commission, Room 337, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0305.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 30, 1982, by counsel on behalf of Atlantic Steel Corp., Georgetown Steel Corp., Georgetown Texas Steel Corp., Continental Steel Corp., and Raritan Steel Co., all of which are U.S. producers of carbon steel wire rod. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petition, or by November 15, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR part 207, as amended by 47 FR 6190 and 47 FR 33682), and particularly subpart B thereof.

Written submissions.—Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, on or before November 1, 1982.

Any business information which the submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions except for confidential business data will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., on Monday, October 25, 1982, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for these investigations, Mr. Lynn Featherstone (202-523-0242) not later than October 19, 1982, to arrange for their appearance. It is anticipated that parties in support of the petition for antidumping duties and parties opposed to the petition will be allocated one hour within which to make an oral presentation at the conference.

Inspection of the petition.—A copy of the petition filed in these cases is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207 as amended by 47 FR 6190 and 47 FR 33682), and

part 201, subparts A through E (19 CFR part 201 as amended by 47 FR 6188, 47 FR 13791, and 47 FR 33682). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

The notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: October 6, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN TEXTILE SPINNING
FRAMES AND AUTOMATIC
DOFFERS THEREFOR

} Investigation No. 337-TA-124

Notice of Commission Review of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review on its own motion an initial determination granting a motion to terminate this investigation with respect to respondents Rieter Machine Works, Ltd., and Rieter Corp. on the basis of a settlement agreement.

AUTHORITY: The authority for Commission disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in section 210.55 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.55).

SUPPLEMENTARY INFORMATION: The initial determination was issued in response to a motion to terminate this investigation as to respondents Rieter Machine Works Ltd. and Rieter Corp., on the basis of a settlement agreement between complainant Platt Saco Lowell Corp. and the above-referenced respondents.

The initial determination granted the motion to terminate. None of the parties to the investigation petitioned for review of the initial determination. However, the Commission has determined that there are certain issues of law and policy raised by other comments filed in response to the initial determination that warrant review of the initial determination.

Copies of the presiding officer's initial determination, the Commission Action and Order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Sheila Landers, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

By order of the Commission.

Issued: October 6, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN HAND-OPERATED, GAS
OPERATED WELDING, CUTTING
AND HEATING EQUIPMENT
AND COMPONENT PARTS
THEREOF } Investigation No. 337-TA-132

Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: October 4, 1982.

DONALD K. DUVALL,
Chief Administrative Law Judge.

In the matter of
CERTAIN VACUUM CLEANER
BRUSH ROLLERS } Investigation No. 337-TA-111

*Notice of Termination of Respondent Based on Settlement
Agreement*

AGENCY: U.S. International Trade Commission.

ACTION: Termination of the investigation as to respondent Hornleon Co., Ltd., based on a settlement agreement.

SUMMARY: The Commission has terminated Hornleon Co., Ltd. (Hornleon), as a respondent in the above-captioned investigation on the basis of a settlement agreement. Termination of Hornleon terminates the entire investigation as Hornleon was the only remaining respondent.

SUPPLEMENTARY INFORMATION: This investigation was conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerned alleged unfair trade practices in the importation and sale of certain vacuum cleaner brush rollers. Respondent

Hornleon was terminated on the basis of a settlement agreement entered into between it and complainant Scott & Fetzer Co.

Notice of the institution of this investigation was published in the Federal Register of December 23, 1981 (46 F.R. 62343).

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Lairold M. Street, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0124.

By order of the Commission.

Issued: October 1, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN SILICA-COATED LEAD
CHROMATE PIGMENTS

} Investigation No. 337-TA-120

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on November 1, 1982, in the Waterfront Center, Room 201, 1010 Wisconsin Avenue, N.W., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the Federal Register.
Issued: September 30, 1982.

JANET D. SAXON,
Administrative Law Judge.

In the matter of
CERTAIN PLASTIC-CAPPED
DECORATIVE EMBLEMS

} Investigation No. 337-TA-121

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on November 29, 1982, in the Waterfront

Center, Room 201, 1010 Wisconsin Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

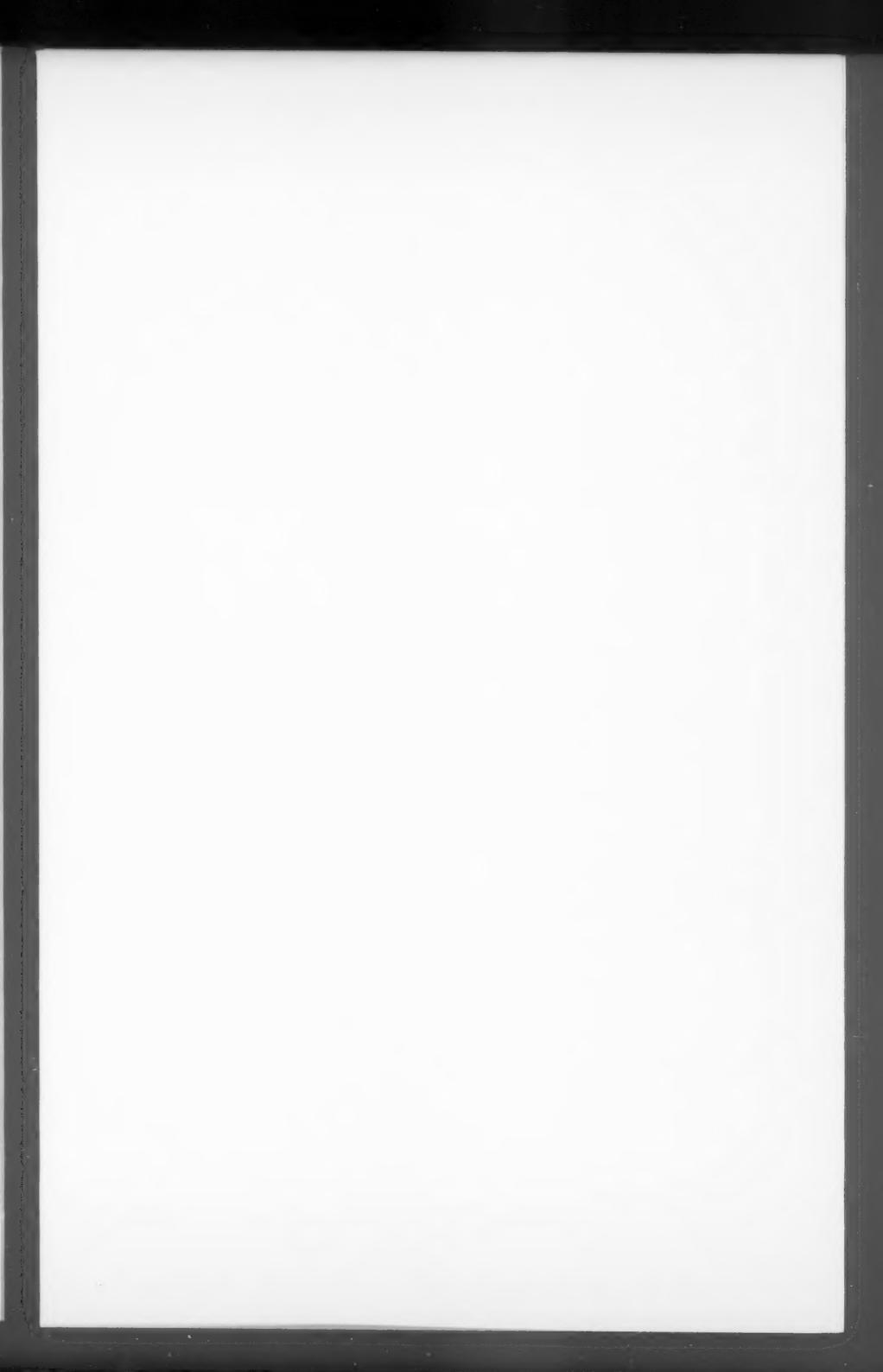
The Secretary shall publish this notice in the Federal Register.
Issued: September 30, 1982.

JANET D. SAXON,
Administrative Law Judge.

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